



Legal Update

February 2020

The SJC holds that police should determine if impounding a vehicle is reasonably necessary by first inquiring if the driver has an alternative to towing it, even where the driver does not affirmatively request it.

Commonwealth v. Goncalves- Mendez, 484 Mass. 80 (2020): On August 4, 2016, Boston police stopped a Honda Accord with what appeared to be a defective brake light driving on Columbia Road in Dorchester. The officers learned from the vehicle's registration number that the defendant, Wilson Goncalves-Mendez, who was the registered owner, had an outstanding misdemeanor default warrant for possession of marijuana with intent to distribute. Additionally, police verified that the passenger's driver's license was valid, and he had no outstanding warrants, nor was he a suspect in any other crimes. The passenger did not appear to be under the influence of any intoxicating substances and he cooperated with police.

Police placed the defendant under arrest for the default warrant and informed the defendant his vehicle would be towed. **The defendant did not ask the passenger to assume custody of the vehicle, and the police did not offer this alternative.** Pursuant to department policy, one of the officers inventoried the vehicle. The officer found a firearm under the driver's seat. When the officer implied that both the defendant and the passenger would be arrested, the defendant said that the firearm was his. The police transported the defendant to the police station and ultimately allowed the passenger to leave the scene.

The defendant was charged with multiple firearms offenses and he filed a motion to suppress the evidence that was found in the car and any statements he made to police. The trial court allowed the motion and the Commonwealth appealed.

Conclusion: The SJC suppressed the evidence recovered during an inventory search and held that where officers are aware that a passenger could assume custody of a vehicle, it is improper to impound the vehicle without first offering the option to the driver.

1st Issue: Was the inventory search lawful?

The issue the SJC had to consider is whether the impoundment was “**reasonably necessary**.” “A lawful inventory search is contingent on the propriety of the impoundment of the vehicle.” *Commonwealth v. Brinson*, 440 Mass. 609, 612, (2003). Impoundment must be undertaken for a legitimate, non-investigative purpose, and must be “reasonably necessary based on the totality of the evidence.” *Commonwealth v. Oliveira*, 474 Mass. 10, 13-14 (2016). The validity of the impoundment depends on whether police reasonably could have concluded they had no lawful, practical alternative.

Where impoundment was deemed reasonable notwithstanding the presence of a passenger, the passenger was unable lawfully to assume custody of the vehicle. See *Commonwealth v. Eddington*, 459 Mass. 102, 109-110 (2011) (passenger had been observed drinking); *Commonwealth v. Ellerbe*, 430 Mass. 769, 775-776, 723 (2000) (passenger did not have valid driver's license available); *Commonwealth v. Caceres*, 413 Mass. 749, 751-752 (1992) (passenger was not authorized to drive in Massachusetts); *Commonwealth v. Garcia*, 409 Mass. 675, 676-677 (1991) (passenger had outstanding warrants).

The SJC previously held that police officers were required to honor a motor vehicle owner's or authorized driver's requested alternative to impoundment where doing so was “lawful and practical.” *Oliveira, supra* at 15.

The SJC also held that an inventory search of a defendant's personal belongings was unreasonable where police were independently aware of an alternative to seizing them. *Commonwealth v. Abdallah*, 475 Mass. 47, 51-52 (2016) (inventory search of backpack was unreasonable where police were aware that hotel where defendant was arrested was willing to retain custody of his other belongings).

According to Boston Police Department Rules and Procedures, Rule 103 § 31 (1984), officers, when arresting a driver, have an option to “leave the vehicle with a person having apparent authority to assume control of it.” Where the vehicle is not being towed,

no inventory search is conducted because there is no risk of false claims against the police or the towing company.

The motion judge found that [1] the officers were aware that the defendant's passenger lawfully could have assumed custody of the vehicle, yet nonetheless told the defendant that his vehicle “would be towed;” and, [2] the officers did not consider the alternatives to impoundment available under the department's motor vehicle inventory policy.

The officers thought that the departmental impoundment policy required towing a vehicle when it was not lawfully parked, and that an arrested driver affirmatively had to request that custody be given to another individual before police were required to release the vehicle to that person. If the driver had requested the passenger to assume custody of the vehicle in this case, police would have had to honor it. The defendant never proposed this alternative. Therefore, the Commonwealth argued that the police did not have to ask the driver if he wished to have the passenger take custody of the vehicle. The SJC found that it never held that police may disregard a readily apparent alternative to impoundment simply because a defendant did not request that a passenger be allowed to leave with the vehicle.

Where officers are aware that a passenger lawfully could assume custody of a vehicle, it is improper to impound the vehicle without first offering this option to the driver. Without asking, police cannot conclude that impoundment is “reasonably necessary.” Since the police did not ask in this case, the impoundment of the defendant's vehicle was improper. Moreover, because the validity of an inventory search turns on the propriety of the underlying impoundment, the search was unlawful. *Oliveira, supra* at 13. The SJC ruled that because it had never had an opportunity to articulate what was reasonable under these circumstances, its **holding shall apply prospectively.**

2nd Issue: Whether the exclusionary rule should apply?

The SJC had to consider whether to suppress the evidence even if the search was deemed unlawful because police never had an affirmative duty to inquire whether a driver wishes a passenger to assume custody of a vehicle until this case. The SJC found that the officers overlooked a readily apparent alternative to impoundment and therefore their decision to impound the vehicle was not “reasonably necessary.” Moreover, the officers' apparent misunderstanding of the Boston police department's inventory policy did not justify unreasonable conduct. **The policy clearly allows for transfer of a vehicle to a third party, and does not condition this alternative on a driver requesting it.** The SJC concluded that the evidence should be suppressed because it was directly obtained from the improper search of the vehicle.